

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTOLIN ANDREWS MARKS,

Petitioner,

v.

A. NEIL CLARK,

Respondent.

Case No. C07-5498RJB

ORDER OVERRULING
OBJECTIONS AND
ADOPTING REPORT AND
RECOMMENDATION OF
MAGISTRATE JUDGE

This matter comes before the Court on Petitioner's Opposition to the Magistrate's Findings and Recommendation. Dkt. 10. Defendants have not filed a response to the objections. The court has considered the pleadings filed in support of the motion and the file herein.

I. BACKGROUND AND PROCEDURE

On October 9, 2007, Petitioner filed a Petition for Writ of Habeas Corpus. Dkt. 6. Petitioner is being held by the United States Immigration and Customs Enforcement at the Northwest Detention Center. *Id.* Petitioner challenges his confinement in Administrative Segregation and the administrative hearing resulting in that confinement. *Id.*

On October 9, 2007, U.S. Magistrate Judge J. Kelly Arnold issued a Report and Recommendation, recommending that the Petition be dismissed with prejudice. Dkt. 7. On October 17, 2007, Petitioner filed an Opposition to the Report and Recommendation. Dkt. 10. The Opposition is currently under seal as is Petitioner's Notice to the Court (Dkt. 9).

II. DISCUSSION

A. Habeas Corpus

The Magistrate Judge recommended that the petition be dismissed for two reasons: (1) 28 U.S.C. § 2241 does not apply to Petitioner because he is not a federal prisoner; and (2) any liberty interest protecting the disciplinary process applies to inmates who face loss of good time. *See* Dkt. 7 at 1-2. While an INS detainee may seek relief by filing a petition for writ of habeas corpus under 28 U.S.C. § 2241, Petitioner may not seek that relief in this case because he is not challenging the fact or duration of confinement. *See Heck v. Humphrey*, 512 U.S. 477 (1994).

The remainder of Petitioner's objections do not address the fact or duration of Petitioner's confinement, *see* Dkt. 10, and are therefore not relevant.

B. Sealed Documents

Petitioner's filings with the Court were provisionally placed under seal. *See* Dkt. 9; Dkt. 10. There is no compelling reason to keep these documents under seal. Therefore, the Court should unseal the documents.

III. ORDER

Therefore, it is hereby

ORDERED that Petitioner's Opposition to the Magistrate's Findings and Recommendation (Dkt. 10) is **OVERRULED** and the Report and Recommendation (Dkt. 7) is **ADOPTED**. Petitioner's Petition for Writ of Habeas Corpus (Dkt. 6) is **DISMISSED**. The Clerk is directed to unseal Petitioner's Notice to the Court (Dkt. 9) and Petitioner's Opposition to the Magistrate's Findings and Recommendation (Dkt. 10).

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

DATED this 19th day of November, 2007.


ROBERT J. BRYAN
United States District Judge